

and in cross-examination the second appellant stated

"I have never claimed a specific amount for compensation. I have never submitted particulars of my claim.

At the Enquiry the Collector did not make it clear to me that the \$12,000/- for the land included the dry dock. The Enquiry was on 28th November, 1949."

From these extracts it would appear that the appellant was quite satisfied with the award of the sum of \$8,000/- for the houses on the land and with the sum of \$12,000/- for the land alone but that he desired a further sum the amount of which he did not fix for the dock. It would also appear that he made no objection whatsoever until the respondent had determined the total amount of compensation and had communicated the amount to him. He then objected to the amount.

It is quite true as was pointed out by Counsel for the appellants that until the respondent issued his statement under section 23 of the Enactment on the 14th of April, 1950, he made no specific reference to any particular sum being payable for the dock. This statement which was properly before this Court disposes of the argument put forward on behalf of the appellants that the evidence that the appellants were awarded nothing for the dock was unchallenged and the respondent's written offer of the compensation, awarded by him and made on the same day as the Enquiry, makes it quite clear that the sum of \$20,000/- was made in full compensation for the land which would legally include the dock.

I cannot regard an objection made to an amount of compensation, already decided upon by a Collector and communicated to the interested party as being the amount of his award, any sufficient reason for an omission to furnish details of a claim under section 9(ii) when it must be borne in mind that these details in accordance with the decision quoted above are required for the very purpose of enabling a Collector to make a fair and reasonable award.

Indeed the reason given in this Court on behalf of the appellants for not making a claim only came into existence after the proper time for making such a claim had already expired.

I have therefore come to the conclusion that the learned Judge was right in refusing to exercise his discretion in favour of the appellants. I would dismiss this appeal. There should be no order for costs of this appeal as the parties hereto have so agreed. At the reference before the learned Judge each party was

ordered to pay its own costs but as the amount awarded did not exceed the sum awarded by the Collector the only order as to costs that could properly have been made under section 37(i) (a) of the Ordinance was for the costs of the reference to be paid by the appellants. I would therefore amend the order of the learned Judge accordingly.

Hill, J. : — I have had the opportunity of reading the judgments of the Chief Justice and of my brother Russell. I am, with respect, in agreement with these judgments and have nothing to add thereto.

Appeal dismissed.

HAMEEDA BEE v. MRS. P. SEENIVASAGAM.

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and Russell, JJ.) September 13, 1950]

[F.M. — Civil Appeal No. 13 of 1950]

Trust — Declaration of trust — Evidence.

In this case the plaintiff-appellant sought a declaration that the defendant-respondent held 14/64 interest in the estate of M. Shaik Adam (deceased) in trust for the plaintiff-appellant. At the trial the learned trial Judge in his judgment said: "I consider it most likely that the defendant's husband did intend when he purchased the share in the estate to do something for the plaintiff and her children, even perhaps as understood by Mr. Peace, to the extent of ultimately handing it back to the plaintiff." The learned Judge however held that no trust had been created and gave judgment for the defendant. The plaintiff appealed.

Held, (1) that clear and unequivocal language must be used to establish a trust; (2) that in this case there was insufficient evidence to displace the natural inference to be drawn from the fact that the respondent's late husband bought the land and had it transferred to himself and therefore the appellant had not discharged the burden placed upon her to prove the trust.

Case referred to:—

- (1) *Po Kin and anor. v. Po Shein* A.I.R. (1926) P.C. 77.

CIVIL APPEAL.

M. S. Mahendran for the appellant.

H. T. Ong for the respondent.

Pretheroe, Ag. C.J. : — In this case the plaintiff sought a declaration that the defendant held 14/64 interest in the estate of M. Shaik Adam (deceased) in trust for the plaintiff. After hearing the arguments the Court dismissed the appeal and stated that its reasons would be given later. Three witnesses gave evidence to the effect that defendant's late husband

bought a plot of land for \$400 and that "it was his intention to hand it back to the widow at some future date". The learned trial Judge found as follows:—

"In the first place I consider it most likely that defendant's husband did intend when he purchased the share in the estate to do something for the plaintiff and her children, even perhaps as understood by Mr. Peace, to the extent of ultimately handing it back to the plaintiff."

Mr. Mahendran, for the appellant, argued that on this finding of fact the learned Judge should have found that the existence of the trust was proved. We were unable to accept this submission. The learned Judge merely found as a fact that the defendant's husband had expressed a certain intention; he also found as a fact that no trust had been created. We agree with the learned Judge as it is necessary that clear and unequivocal language must be used to establish a trust. This fact is set out clearly at page 161 of *Hanbury's Modern Equity* as follows:—

"The cases we have discussed all demonstrate the important rule, that, if it be proposed to make oneself a trustee, one's intention must be shown in unequivocal language—practically the words "I am trustee", or a synonym for such declaration, must be used."

In *Po Kin & Anor. v. Po Shein*⁽¹⁾ the learned

Lord Chancellor said as follows:—

"But on the other side there are also some most important facts. To begin with, and this no doubt is the most important of all, all this property stood in the name of the deceased; and on some of the documents it is stated that the deceased (apparently the deceased in person) paid the money. Of course the burden is on the appellant to displace the natural inference to be drawn from that fact. The burden is no doubt a difficult one to discharge, because in all these benamidar transactions the very object of the parties is secrecy; but still the person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt."

In this case there was insufficient evidence to displace the natural inference to be drawn from the fact that the late Mr. Seenivasagam bought the land and had it transferred to himself. The appellant, therefore, had not discharged the burden placed upon him and consequently the appeal was dismissed. The order of the lower Court is affirmed and respondent will have the costs of this appeal. The deposit of \$500 will be paid out to respondent against her costs.

Thomson, J. :—I agree.

Russell, J. :—I agree.

Appeal dismissed.

